

PT 99-61

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

MIDWEST CORRECTIONAL SERVICES, INC. Applicant	)	A. H. Docket #	98-PT-34
	)	Docket #97-101-86	
	)	Docket #97-101-87	
	)	Docket #97-101-88	
v.	)	Docket #97-101-89	
	)	Parcel Index # 11-22-153-006 (202B812)	
	)	Parcel Index # 11-15-206 006 (195A457)	
	)	Parcel Index # 11-14-227-028 (195A102)	
	)	Parcel Index # 11-11-377-026 (191C382)	
THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS	)	Barbara S. Rowe	
	)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Richard Butera, Butera Law Offices, P.C. for Midwest Correctional Services, Inc.

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue, Chicago, Illinois on July 1, 1998, to determine whether or not Winnebago County Parcel Index Nos. 11- 22 - 153 - 006 a /k/a 202 B812 , 11- 15- 206- 006 a /k/a 195A457, 11- 14- 277- 028 a /k/a 195A102 , a n d 11- 11- 377- 026 a /k/a 191C 382 qualified for exemption during the 1997 assessment year.

Kerry Knodle, Executive Director of Midwest Correctional Services a/k/a Rockford YouthBuilt (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcels during the 1997 assessment year; secondly, whether the applicant is a charitable organization; and lastly, whether these parcels were used by the applicant for exempt charitable purposes during the 1997 assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned these parcels during the period of August 26, 1997, through December 31, 1997, or for 35% of the 1997 assessment year. It is also determined that the applicant is not a charitable organization. Finally, it is determined that the applicant did not use the parcels for charitable purposes during the portions of the 1997 assessment year that it owned the parcels.

Findings of Fact:

1. The jurisdiction and position of the Department that Winnebago County Parcel Index Nos. 11 - 22 - 153 - 006 a /k/a 202 B 812 , 11 - 15- 206- 006 a /k/a 195 A 457, 11- 14- 277- 028 a /k/a 195 A 102 , a n d 11- 11- 377- 026 a /k/a 191 C 382 did not qualify for property tax exemptions for the 1997-assessment year was established by the admission into evidence of Dept. Ex. Nos. 1 through 8. (Tr. p. 21)

2. On October 24, 1997, the Department received a property tax exemption application from the Winnebago County Board of Review for the 1997-assessment year for Permanent Parcel Index No.11-22-153-006 a /k/a 202 B 812 . The applicant had submitted the request and the board recommended granting the exemption from March 26, 1997, through December 31, 1997. The Department assigned Docket No. 97-101-86 to the application. (Dept. Grp. Ex. No. 2)

3. On October 24, 1997, the Department received a property tax exemption application from the Winnebago County Board of Review for the 1997-assessment year for Permanent Parcel Index No. 11 - 15- 206- 006 a /k/a 195 A 457.

The applicant had submitted the request and the board recommended granting the exemption for the period of August 26, 1997, through December 31, 1997. The Department assigned Docket No. 97-101-87 to the application. (Dept. Grp. Ex. No. 3)

4. On October 24, 1997, the Department received a property tax exemption application from the Winnebago County Board of Review for the 1997-assessment year for Permanent Parcel Index No. 11-14-277-028 a/k/a 195 A 102. The applicant had submitted the request and the board recommended granting the exemption for the period of August 26, 1997, through December 31, 1997. The Department assigned Docket No. 97-101-88 to the application. (Dept. Grp. Ex. No. 4)

5. On October 24, 1997, the Department received a property tax exemption application from the Winnebago County Board of Review for the 1997-assessment year for Permanent Parcel Index No. 11-11-377-026 a/k/a 191 C 382. The applicant had submitted the request and the board recommended granting the exemption for the period of August 26, 1997, through December 31, 1997. The Department assigned Docket No. 97-101-89 to the application. (Dept. Grp. Ex. No. 5)

6. On March 12, 1998, the Department denied the requested exemption applications, finding that the properties were not in exempt use in 1997. (Dept. Grp. Ex. No. 6)

7. The applicant timely protested the denials of the exemptions and requested a hearing in the matter. (Dept. Ex. No. 7)

8. The hearing conducted at the Department's offices in Chicago, Illinois, on July 1, 1998, was held pursuant to that request. (Dept. Ex. No. 8)

9. The applicant acquired Parcel Index No. 11-22-153-006 a/k/a 202 B 812 by a Corporation Warranty Deed dated August 26, 1997. The parcel contains a 1,344 square foot two-story single family residence. The property is commonly known as 1432 Mulberry Street, Rockford, Illinois (hereinafter referred to as "Mulberry"). (Dept. Grp. Ex. No. 2 pp. 1-4)

10. Also on August 26, 1997, the applicant acquired Parcel Index No. 11-15-206-006 a/k/a 195 A 457 by a Corporation Warranty Deed. The property is commonly known as 2908

Lawndale, Rockford, Illinois (hereinafter referred to as “Lawndale”). The parcel contains a 1,381 square foot 1½ story single family residence. (Dept. Grp. Ex. No. 3 pp. 1-4)

11. The applicant acquired Parcel Index No. 11-14-277-028 a/k/a 195 A 102 by a Corporation Warranty Deed dated August 26, 1997. The parcel contains a 1,180 square foot, two-story single family residence. The property is commonly known as 1526 Evergreen Street, Rockford, Illinois (hereinafter referred to as “Evergreen”). (Dept. Grp. Ex. No. 4 pp. 1-4)

12. On August 26, 1997, the applicant acquired Parcel Index No. 11-11-377-026 a/k/a 191 C 382 by a Corporation Warranty Deed. The parcel contains a 1,296 square foot single family home that has 1½ stories. The property is commonly known as 1907 Fulton Avenue, Rockford, Illinois (hereinafter referred to as “Fulton”). (Dept. Grp. Ex. No.5 pp. 1-4)

13. The applicant was incorporated under the General Not-for-Profit Corporation Act of Illinois on June 15, 1992, for the purpose of providing charitable assistance to individuals within the criminal justice system. The articles were amended in 1995 to add language that “[T]he corporation is organized exclusively for charitable, educational, religious or scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.” (Dept. Grp. Ex. No. 2 pp. 8-18; Dept. Grp. Ex. No. 3 pp. 8-18; Dept. Grp. Ex. No. 4 pp. 8-18; Dept. Grp. Ex. No. 5 pp. 8-18)

14. The applicant was formed to provide education, job training programs, and affordable housing to at-risk and disadvantaged individuals in the community. The applicant defines at-risk to mean socially disadvantaged, economically disadvantaged, and legally disadvantaged persons. Specifically, those persons are in the criminal justice system on probation, parole, or in a community correction type program. (Tr. pp. 23, 63)

15. The applicant’s program has expanded upon the commencement of its major program called YouthBuilt. YouthBuilt is a program operated through the applicant’s agency. (Tr. pp. 23-24, 63-64)

16. YouthBuilt is a federally funded program through the Department of Housing and Urban Development (hereinafter referred to as HUD). Youthbuilt provides education, job

training, leadership development, and community service opportunities to low-income high school dropouts between the ages of 16 and 24. (Tr. p. 24)

17. The program requires the participants to spend at least 50% of their time actually doing construction or rehabilitation of low-income housing under the supervision of a journeyman trainer. The work must be substantial in nature and not just cosmetic. The student spends the remainder of the day in a classroom studying for the GED or other training. Participants spend about a year in the program and are paid a need-based stipend to be in the program. (Tr. pp. 24-26)

18. Once a participant finishes the program, the applicant assists the student to be placed in an apprenticeship, placement, or other post-secondary education program. The ultimate goal of the program is to produce self-sufficient youth that are an asset to the area. (Tr. pp. 25-27)

19. The applicant testified that it receives funding for the YouthBuilt program from HUD, a grant from the State Department of Human Services, and grants from private foundations. (Tr. pp. 27-28; Petitioner's Ex. No. 2)

20. The applicant testified extensively about the YouthBuilt program and the fact that the applicant is a Community Housing Development Organization. No additional evidence was offered to support the assertions. (Tr. pp. 23-48, 64-74)

21. The applicant purchased the subject parcels from the Rockford Housing Authority, which is a municipal corporation. The executive director of the applicant asserted that the City of Rockford has designated the applicant as a Community Housing Development Organization. As a Community Housing Development Organization, the applicant had the opportunity to obtain properties from the Rockford Housing Authority. The applicant submitted a proposal to the Housing authority for the four subject parcels. The properties were transferred to the applicant for a dollar plus closing costs. (Dept. Ex. No. 2 p. 5; Dept. No. 3 p. 5; Dept. No. 4 p. 5; Dept. No. 5 p. 5; Tr. pp. 30-48, 50-52, 70-71)

22. Once the applicant purchases a parcel, an initial assessment of the property is

made so that immediate hazards can be dealt with, such as broken glass. A general clean up is done of the area. (Tr. pp. 52-53)

23. The applicant has a construction manager that evaluates each property, draws up construction plans, and has subcontractors submit bids for the projects. The applicant has only one crew to work on the projects, so they are unable to do multiple projects at one time. (Tr. pp. 53-54)

24. The applicant has a tenant selection plan that outlines procedures that will be followed in selecting tenants to live in the properties of a project. The testimony was that the plan spells out the applicant's procedures in terms of how they market the properties that they have for sale or rent, how they establish a waiting list, how they determine if individuals have a preference due to certain criteria, and the plan outlines the procedures that the applicant goes through to insure that they are meeting the requirements of the Fair Housing Act and other state and federal regulations. The applicant did not submit a completed tenant selection plan for the subject parcels. Instead, a blank form was admitted into evidence. (Petitioner's Ex. No. 1; Tr. p. 47-50)

25. The applicant organization is not set up to provide free housing. They require people to submit a security deposit and one month's rent. (Tr. p. 75)

26. The applicant submitted a computerized profit and loss statement for the period of January through December 1997. The applicant had income in the amount of \$510,421.74¹ and expenses in the amount of \$606,771.53² for a net loss for that period of \$96,349.79. (Dept. Ex. No. 2 pp. 25-27)

27. The applicant is exempt from payment of income tax pursuant to a 501(c)(3) designation granted by the Internal Revenue Service on August 16, 1995. (Dept. Grp. Ex. No. 2

¹ The income was from: Americorps-\$27,938.00; unrestricted contribution-\$5,438.38; grants for YouthBuild-\$330,913.69; program fee income (such as a raffle & vending machine income)-\$11,009.88; elec Monit/Client pay-\$3,840.00; YB Construction Projects-\$57,414.70; and MSC Construction Projects-\$73,867.09.

² Applicants expenses were: payroll-\$331,345.75; General/Administrative-\$87,483.81; Supplies-\$12,983.25; Payroll Taxes-\$22,853.71; Outside Services-\$104,815.59; Construction Materials-\$32,363.30; Electronic Monitoring \$2,456.94 and Youth Development-\$12,469.18

pp. 29-32; Dept. Grp. Ex. No. 3 pp. 29-32; Dept. Grp. Ex. No. 4 pp. 29-32; Dept. Grp. Ex. No. 5 pp. 29-33; Tr. p. 21)

28. The residence located on Mulberry contains a porch, living room, dining room, foyer, and kitchen on the first floor. Located on the second floor are three bedrooms and a bath. With the application, the applicant submitted an estimate that it will cost \$19,770.00 to refurbish the residence. The applicant submitted a computerized list entitled "improvement" bills for the subject parcel in the amount of \$260.24. The computerized list represents unaudited in-progress financial reports that were designed to show ongoing work and expenses for the project. The renovation project was scheduled to start on April 27, 1998. At the time of the hearing, the property was scheduled for rehabilitation in July. The appraised value of the property was about \$31,000.00. During 1997 the property was vacant. (Dept. Grp. Ex. No. 2 pp. 22-24, 28; Tr. p. 54, 70, 77; Petitioner's Ex. No. 2)

29. The Lawndale residence contains a porch, living room, two bedrooms, a bath, a dining room, and a kitchen on the first floor. On the second floor are located two more bedrooms and two storage areas. The cost for rehabilitation of the house was estimated to be \$29,525.00. The applicant submitted a computerized list entitled "improvement" bills for the subject parcel in the amount of \$6,875.47. The computerized list represents unaudited in-progress financial reports that were designed to show ongoing work and expenses for the project. The renovation was scheduled to begin on February 16, 1998. As of the date of the hearing, the applicant was nearing completion of the renovation of the Lawndale property. Generally, a renovation job takes 6-8 weeks to complete. The applicant anticipates that the market value of the property will be between \$55,000.00 and \$60,000.00. The property was vacant in 1997. (Dept. Grp. Ex. No. 3 pp. 22-24, 28; Tr. pp. 54, 70, 77; Petitioner's Ex. No. 2)

30. The Evergreen parcel contains a house that has a living room, dining room, kitchen, and bedroom on the first floor. The second floor contains two bedrooms and a bath. There is also a basement. With the application, the applicant submitted an estimate that the renovation costs for the residence would be \$20,000.00. The applicant submitted a computerized

list entitled “improvement” bills for the subject parcel in the amount of \$19,471.49. The computerized list represents unaudited in-progress financial reports that were designed to show ongoing work and expenses for the project. The renovation was scheduled to begin on March 23, 1998. As of the date of the hearing, the renovation was completed and the property was for sale. The applicant anticipates that the market value of the property will be between \$55,000.00 and \$60,000.00. The property was vacant in 1997. (Dept. Grp. Ex. No. 4 pp. 22-24, 28, 44-57; Tr. pp. 58, 70, 77; Petitioner’s Ex. No. 2)

31. The house on the Fulton property has a deck, living room, kitchen, bath, and two bedrooms on the first floor. On the second floor is located a third bedroom. The applicant anticipated that renovation costs for the residence would be \$14,580.00. The applicant submitted a computerized list entitled “improvement” bills for the subject parcel in the amount of \$25,068.40. The computerized list represents unaudited in-progress financial reports that were designed to show ongoing work and expenses for the project. Renovation was to begin on January 5, 1998. As of the date of the hearing, the project had been completed. The property was sold on April 10, 1998, for \$59,500.00. The property was vacant in 1997. (Dept. Grp. Ex. No. 5 pp. 22-24, 28; Tr. pp. 58, 70, 75; Petitioner’s Ex. No. 2)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for

property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) Institutions of public charity.
- (b) Beneficent and charitable organizations incorporated in any state of the United States, . . .
- (c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption, the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code . . . and either (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based upon an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services

Here, the appropriate exemption applies to "institutions of public charity." Our courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill. 2d 149, 156 (1968) (hereinafter referred to as "Methodist Old People's Home"). See also, Institute of Gas Technology v. Department of Revenue, 286 Ill. App. 3d

779 (1st Dist. 1997) leave to appeal denied. The Court ascribed to the following definition of charity originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893):

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

The Illinois Supreme Court has effectuated this definition by observing that all "institutions of public charity" share the following "distinctive characteristics[:]"

- 1) they have no capital stock or shareholders;
- 2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) they dispense charity to all that need and apply for it;
- 4) they do not provide gain or profit in a private sense to any person connected with it; and,
- 5) they do not appear to place obstacles of any character in the way of those that need and would avail themselves of the charitable benefits it dispenses.

Me t h o d i s t O l d P e o p l e ' s
H o m e a t 1 5 7 .

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

The applicant stressed the fact that they were determined to be a charitable organization and had been granted a 501(c)(3) status by the Internal Revenue Service. However, the fact that an organization had been granted a letter of exemption from federal income taxes or is exempt from sales and use taxes is not determinative of the issue of whether the property of an organization claiming exemption from real estate taxes was used exclusively for charitable purposes. People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970), Clark v. Marian Park, Inc. 80 Ill. App. 3d 1010 (1980), Decatur Sports Foundation v. Department of Revenue, 177 Ill.App.3d 696 (4th Dist. 1988).

I find that because the applicant is an Illinois not-for-profit corporation and has been designated as a 501(c)(3) organization by the Internal Revenue Service, that the applicant has established that they have no capital stock or shareholders. I find that the applicant has failed to establish that they have any of the remaining characteristics enumerated in Methodist Old People's Home. I therefore find that the applicant is not a charitable organization.

The applicant herein did not use the four properties in question in 1997. They were vacant. The Illinois Appellate Court found that a church owned building which was not used for any purpose and was boarded up during the taxable years in question did not qualify for a property tax exemption for those years. Antioch Missionary Baptist Church v. Rosewell, 119 Ill.App.3d 981 (1st Dist. 1983). In addition, the Fifth District Appellate Court held that eighteen

vacant lots did not qualify for a property tax exemption in Comp. Train. & Devel. v. Co. of Jackson, 261 Ill.App.3d 37 (5th Dist. 1994).

I n t h e c a s e o f P e o p l e e x . r e l . P e a r s a l l v . T h e C a t h o l i c B i s h o p o f C h i c a g o, 311 I l l . 11 (1924) , t h e I l l i n o i s S u p r e m e C o u r t h e l d t h a t t h e m e r e f a c t t h a t a p r o p e r t y w a s i n t e n d e d t o b e u s e d f o r a n e x e m p t p u r p o s e w a s n o t s u f f i c i e n t t o e x e m p t s a i d p r o p e r t y . T h e C o u r t r e q u i r e d t h a t t h e a c t u a l p r i m a r y e x e m p t u s e m u s t h a v e b e g u n f o r t h e p r o p e r t y t o b e e x e m p t .

Based upon the foregoing, I find that the applicant has failed to establish that it is a charitable organization or that it used the subject parcels for charitable purposes in 1997. I therefore recommend that Winnebago County Parcel Index Nos. 11- 22 - 153 - 006 a /k/a 202 B 812 , 11- 15- 206- 006 a /k/a 195 A 457, 11- 14- 277- 028 a /k/a 195 A 102 , a n d 11- 11- 377- 026 a /k/a 191 C 382 r e m a i n o n t h e t a x r o l l s f o r t h e p o r t i o n o f t h e 1997 a s s e s s m e n t y e a r t h a t t h e a p p l i c a n t o w n e d t h e m .

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
April 7, 1999